MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on March 2, 2005 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:
Sen. Mike Cooney, Chairman (D)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. John Brueggeman (R)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Steven Gallus (D)
Sen. Ken (Kim) Hansen (D)
Sen. Bob Hawks (D)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Don Ryan (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: SB 59, 12/29/2004; SB 498, 2/16/2005; SB 442, 2/11/2005
Executive Action: SB 59; SB 442; SB 27; SB 28; SB 247

HEARING ON SB 59

Opening Statement by Sponsor:

SEN. JOSEPH (JOE) TROPILA (D), SD 13, Great Falls, opened the hearing on **SB 59**, Create "rainy day fund". The Legislative Finance Interim Committee anticipated a surplus of $180 million to $200 million and thought about a "rainy day fund". Now that the surplus has gone to $300 million it might be wise to consider it if there is a surplus at the end of the session. **SEN. TROPILA** advised other states have a rainy day fund and he cautioned the coal tax fund is not and was never intended to be one. If there is a surplus at the end of this session, he hoped the committee would consider a rainy day fund. With this in mind and with the other bills that are in the mix, he asked the committee to table the bill and if they need it they will still have it.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. DAN WEINBERG asked the purpose of rainy day fund. **SEN. TROPILA** advised a rainy day fund would require a 3/4 vote of the body and could be used for emergencies. The reason for the surplus is state taxes are no longer deductible and the low fire season. It can be used for anything that 3/4 of the Senate or the House would vote for. **SEN. WEINBERG** inquired if the federal government cut back on Medicaid if that would be considered an emergency. **SEN. TROPILA** replied yes.

Closing by Sponsor:

SEN. TROPILA closed on the bill.

HEARING ON SB 498

{Tape: 1; Side: A; Approx. Time Counter: 4.3}

Opening Statement by Sponsor:

SEN. JERRY BLACK (R), SD 14, Shelby, opened the hearing on **SB 498**, Increase limit for loan to water users' association or ditch company. SB 498 is necessary to address a critical problem being faced by the Pondera County Canal and Reservoir Company (PCCRC) and other possible private water user associations or ditch companies. This bill would provide a source of funding for private irrigation companies to obtain a long-term, low-interest loan from the Renewable Resource Grant Loan Program. For many of the aging irrigation projects, their delivery systems are aging and in need of significant repair. Many of these projects have been operated successfully as private entities for decades. The PCCRC has operated for nearly 100 years. The availability of state and federal loan and grant funds are practically non-existent. Most state and federal loan and grant programs require that the applicant must be a public entity, such as a water user's district or an irrigation district. The PCCRC would use this $3 million of loan authority to rebuild and rehabilitate the east dam. The entire project will cost about $6 million to complete.

EXHIBIT(fcs46a01)

Proponents' Testimony:

SEN. GLEN ROUSH advised this dam is located in Pondera County, just outside of Valier, Montana. The dam forms Lake Francis. The Canal Association owns the water rights and does the irrigation on a good part of Pondera County. The money will help rehabilitate the dam and help them get other resources to rebuild the dam. He asked for support of the bill.

REP. LLEW JONES testified the dam and Lake Francis are in his district. He described touring the dam and seeing the damage. The cement is rotting away. This serves a significant irrigation area, the community of Conrad, and is an important part of the agricultural and urban economies. He hoped the committee would look favorably on the bill.

Mary Sexton, DNRC, said she is a former Teton County Commissioner and supports funding for the irrigation project and for the municipal water supply for Conrad. There are over 21 private ditch companies and associations in Montana. This extension of funding would benefit a great number of ditch companies who would previously not have been able to access the larger amount of money. She added there are a number of state-owned canal systems that the state has been turning over to private ditch companies and associations. Often it is because they can be more efficiently run locally, but also it is a matter of funding and whether it should be on the shoulders of the users or the state. For these companies, their funding opportunities would also expand. She urged support for the bill.

Mike Murphy, Montana Water Resources Association, spoke in support of the legislation. This project is an important aspect of the economy for that area of the state and for agriculture in general. The bill provides for a resource loan for the ditch company to rehabilitate the dam and provide for continuance of a project that has been in existence for nearly 100 years.

Gerald Miller, President, PCCRC, stated construction was started on the east dam in 1908 and completed in 1910. A 2001 survey showed the dam was high hazard. Their permit is due in November of 2007 and they don't know if it will be re-issued because of the condition of the dam. Over $200,000 was spent to fill voids and for grouting. Shareholders spent over $7 million of their own money trying to keep the project going. There are 80,000 shares and 395 shareholders in the project. He cited fishing, wildlife, recreation and the Rocky Mountain Front as assets in this area. There is a big impact if the dam is shut down.

Vernon Stokes, PCCRC, advised a 2002 stability analysis showed a void in the middle of the dam which took 220 cubic yards of concrete to fill. Inside the conduit, the concrete is wearing out and there is exposed rebar. Due to this condition they are only able to let out half the capacity. The dam is classified high hazard which means if it does wash out there is potential for loss of life. Interstate 15 is downstream from the dam, as well as various county roads and the state highway.

Monty Johnson, PCCRC, advised he has a farm and ranch and depends on this project for a substantial amount of his income each year. Without this dam there is potential loss of life below the dam. The lake provides recreation and is not strictly for the shareholders. Below the dam the county would be losing roads, bridges, culverts, etc. There is a missile base south of the lake that relies on the lake for its water supply. The city of Conrad is solely dependent upon the lake for drinking water. He cited the economic benefit to the area. SB 498 raises the amount of money they can borrow from $300,000 to $3 million. They have a $5 million problem and $3 million will help.

Matt Jergeson, Morrison-Maierle, testified they are the engineer for the canal company. He was in support of the bill for the state as a whole. There is about 2.8 million acres of irrigated land in Montana of which about 1.7 million are actually harvested in a given year. A lot of the unused irrigated land is due to degraded infrastructure. There are estimates of $3 billion to $5 billion of irrigation construction in Montana of which fifty percent is in need of rehabilitation. This bill will help out a lot of the entities that are not eligible for state and federal funding because they are not public entities. He wanted to see agriculture in Montana carry on for years to come. The Governor's water storage report issued in January identified Lake Francis east dam as number three on the priority list. It is estimated to cost $6 million to rehabilitate the dam.

EXHIBIT(fcs46a02)

Opponents' Testimony: None.

Informational Testimony:

John Tubbs, Department of Natural Resources, explained fiscal notes for bonding bills are odd because they are not an appropriation. The fiscal note assumed a $3 million loan in the spring of 2006. There would be a closing fee of about one percent to cover the cost of issuing the bonds for that sale. The remaining authority in the program is $12 million. The payment on a thirty-year term loan would be $203,000 and on a twenty-year term it would be $248,000. The program primarily funds irrigation systems for individual farmers and some ditch companies. There are a number of ditch company loans with a $300,000 limit. The PCCRC is not the only type of entity in the state that will qualify for these dollars. The challenge to the department is to administer larger loans. He recalled a loan to the PCCRC in the 1980s before tax laws changed. PCCRC will be required to collect extra revenues in order to assure making the payments. There have been bankruptcies in the private loan program and the program lost some money in the late 1980s because of unsecured loans. For the last 15 years, they have not lost money even with bankruptcies.

Questions from Committee Members and Responses:

SEN. TRUDY SCHMIDT asked about the amount and **Mr. Tubbs** repeated, for the $3 million loan at 5.36% interest, at 30 years, the debt service was $203,462 and on 20 years $248,337.

{Tape: 1; Side: B}

SEN. RICK LAIBLE asked about the $12 million authority and if it was annual. **Mr. Tubbs** responded they have a maximum of $30 million in outstanding debt. Currently, there is just under $17 million outstanding and they just set up to issue another bond that would bump them over $18 million. **SEN. LAIBLE** expressed concern about ramping up the program without ramping up the total authority. He wondered if they would get to the $30 million quickly and if so if smaller users will get locked out of the program. **Mr. Tubbs** replied borrowing $3 million is expensive for the borrower and he didn't expect a lot of $3 million loans. He knew of one group that would like to borrow $3 million. He expected to issue about $6 million of the $12 million. He suspected if there is a lot of activity they will be back next session with a bond bill to increase the cap. That requires a two-thirds vote so they don't like to do that very often. **SEN. LAIBLE** asked how much in dollar value gets paid off on average. **Mr. Tubbs** answered they get about $1 million a year in debt service.

SEN. JOHN ESP asked how many loans outstanding were $300,000 loans. **Mr. Tubbs** thought there were only two loans that come close to $300,000. The majority are below $200,000. **SEN. ESP** asked if **Mr. Tubbs** anticipated people raising their sights. **Mr. Tubbs** indicated most borrowers are an individual, a corporation, or a farm-ranch operation. Those, by statute, continue to be constrained to under $200,000.

SEN. JON TESTER asked how many private ditch companies are 80-100 years old. **Mr. Tubbs** said he didn't have a final number and the 21 mentioned by **Director Sexton** were associated with state projects. He maintained there are over 100 associations for irrigation purposes along with owner's associations and water user's associations. There had not been a lot of drinking water loans in the program. He offered to get a better number and report back. **SEN. TESTER** advised that would indicate if the cap had to be raised. He wondered about net revenue. **Mr. Tubbs** explained .8 times net revenues equals maximum debt service. To borrow $203,000 they would need to collect net revenue of $254,000. Net revenue is gross revenue of the system minus their operation and maintenance costs. **SEN. TESTER** asked **Mr. Stokes** who would issue the operating permit in 2007. **Mr. Stokes** indicated it was the DNRC. **SEN. TESTER** asked if this dam isn't significantly rehabilitated, if the permit may be in jeopardy. **Mr. Stokes** replied it depends what happens in the time-frame between now and 2007. **SEN. TESTER** asked if the debt load would put the operation at risk. **Mr. Stokes** maintained with the rate charged to shareholders per acre and the money they bring in, they would be able to meet the criteria for the $3 million loan. **Mr. Miller** added they could raise more to cover the bond. As a shareholder, he had close to 1500 acres of irrigation under this project.

SEN. KEITH BALES said he spoke with **Mr. Tubbs** concerning how to expand this program to get more irrigation going in parts of Montana. Most loans were to private individuals on their irrigation systems and those fall under the $200,000 limit rather than the $300,000 they were looking to amend. He wondered how many loans were bumping up against the $200,000 cap. **Mr. Tubbs**

replied there are probably a half dozen borrowers who are maxed out at the $200,000 limit and could not borrow from this program. They have turned away some of their good customers when that limit has been reached. He added when they do a loan for a large canal reservoir company they take a lien against the water right. Should they not pay the state back, the state can shut off the water. **SEN. BALES** asked if the department could handle the increase. **Mr. Tubbs** answered he would provide the loan list so a factual decision could be made before executive action on the bill. He didn't advise bumping it up more than $100,000. He had a concern about individuals taking on too much debt.

SEN. DAN WEINBERG asked if an independent assessment had been done to see if this loan could be paid back. **Mr. Tubbs** indicated that is the responsibility of the department. They have to apply and the department will look at all their financials. The canal company is a current borrower and he understands their gross revenues and the stability of the association. He maintained they would do a significant investigation before approving a $3 million loan. **SEN. WEINBERG** asked if an assessment would be done by an independent party such as a lending institution. **Mr. Tubbs** said no. **SEN. WEINBERG** asked if any private sector money was available for these folks or others in the same position. **Mr. Tubbs** advised they are not in the business of competing with private institutions. The program fills a void that other lenders won't fill. To his knowledge, for a $3 million loan with these terms, there are no private institutions that are going to lend these kinds of dollars for that long. Agricultural bankers like to do short term loans with a maximum of five years. This particular loan would be the first loan of that size. He was unaware of any private institutions that would make this type of loan. **SEN. WEINBERG** said he understood they don't compete with private institutions and can offer lower rates but asked if they also tolerate greater risks. **Mr. Tubbs** responded to some extent the statute tells them to tolerate greater risks. The statute was enacted to support farming. If a bank won't make that loan and the department does, that is an indication the department is willing to take a risk. Agricultural banks don't lend for more than five years anymore because the loans that they had out of term didn't get paid off and were a loss for the banks. He maintained the department has not lost money on their loans to privates, because the loans were secured. A well-secured loan is a loan that gets paid back. The loans they lost money on did not have adequate security.

SEN. ESP asked when they make a loan to an institution like this, if they look beyond the specific proposal. The association needs $6 million and is asking for $3 million. He said he looked at the numbers and it looked like they could only handle the debt service on $3 million. He wondered if they could look at the total needs of the project and inquired if they put a package together if the department is in a first position or a second position. **Mr. Tubbs** explained they don't close a loan on parts of projects. They may be able to phase in the project so they can complete a portion of it and fund it without a lot of additional funding. They will not build half a dam, he contended. The primary responsibility is not only to complete the project but to look thirty years in the future through the term of the loan. He pointed out they do large loans every day to governmental entities. He stated PCCRC has a choice; they can form a government irrigation system. Their problem with that is they have operated successfully as a private company for 100 years. **Mr. Tubbs** assured **SEN. ESP** that there is absolutely no subsidy other than paying **Mr. Tubbs'** salary. These are market rate loans and they pay the cost of issuing the bonds. **SEN. ESP** asked if this would affect the overall bond rate of the state and was told, no.

SEN. TESTER asked if they loan $3 million if there is an expectation by the department that this project will borrow another $2.9 million. **Mr. Tubbs** stated his expectation was for a complete project. He wants to see how they achieve the $5.9 million over-all. The department may be able to close a front-end loan, phase I, to keep the dam in operation while they raise $2.9 million. **Mr. Miller** added if they have to they will raise their rates. They are looking for federal grants. They are building this for the future. He pointed out Anheuser Busch is in Conrad and that is a major thing to lose. **SEN. TESTER** noted Conrad is the second largest shareholder and if Conrad owned this thing they could get all sorts of monies. **Mr. Tubbs** responded as the second largest, Conrad is still a small percent of the total.

SEN. GREG BARKUS held there were a lot of bankers in the state that made a lot of collateral loans in the past and put a lot of folks out of business. He hoped the department makes loans on the capacity to repay rather than collateral. **Mr. Tubbs** affirmed he has one of the best loan officers in the state, who has twenty-plus years of experience with the department as well as ten years experience in agricultural banking in the private sector. He noted they do turn down loans, typically to young farmers trying to grow a business. The majority of those are land rich and cash poor. On occasion, they make a loan that is on the edge. The statute requires them to look hard at supporting the individual trying to make a living on the land.

{Tape: 2; Side: A}

SEN. BARKUS recalled the lake had to be dredged in the last couple of years to get to the conduit. **Mr. Stokes** advised that was for the city of Conrad to get their water. They are now in the process of moving out into the deep pool of the lake so they should not have to do any more dredging.

SEN. GREG LIND noted the average shareholder owns about 200 shares. He asked if the per share maintenance fee is doubled, if it would be another $3000 per shareholder per year. **Mr. Jergeson** indicated the median shareholder owns about 400 shares. If they were to borrow the whole $5.9 million, including $3 million from the state, and $2.9 million from another entity, it would increase their rates by about $8 per share. That would be about $3100 per year. For a thirty-year term, that drops to about $2400 or roughly $6 per share.

Closing by Sponsor:

SEN. BLACK advised the dam is nearly 100 years old and in deplorable condition. It serves a vital part of northern Montana. The city of Conrad relies on it totally for their water supply system and 80,000 acres of property and farm land are irrigated. The Air Force uses it for their missile site, and it provides recreation for all of north central Montana. Water is critical to Montana and one of Montana's great assets, not only because it sustains all life but it seems to be the key to continued economic viability or economic growth. Because PCCRC is a private business, they have been refused funding from the state and federal agencies and this loan program is one of their only means to get accessible monies to be able to rebuild that dam. The private lending people do not want to take a dam as collateral for a private loan as it is difficult to find buyers. He thanked the managers and directors of the company for traveling to the hearing and he recommended a do pass motion. He thanked the committee for an excellent hearing.

CHAIRMAN COONEY turned the chair over to **SEN. SCHMIDT** for the hearing on SB 442.

HEARING ON SB 442

{Tape: 2; Side: A; Approx. Time Counter: 5.0 - 11.6}

Opening Statement by Sponsor:

CHAIRMAN MIKE COONEY (D), SD 40, Helena, opened the hearing on **SB 442,** Repeal POINTS replacement fee. **SEN. COONEY** advised SB 271 was passed in the last session requiring the Department of Revenue to replace POINTS. It authorized the department to secure financing of the project through the Board of Investments. As a means of making the principal and meeting the payments on the loan for financing the new system, the Department was authorized to apply an administrative fee against selected taxes. The Department entered into a loan agreement and applied the administrative fee against individual income tax revenues to meet the required debt service payments. The Legislative Audit Division, in its recent financial compliance audit of the Department, indicated the 2003 Legislature had authorized state debt without the constitutionally mandated 2/3 vote of each house. The creation of state debt required subsequent legislative assemblies to appropriate funds for repayment of the debt. This put the corpus of the Coal Tax Trust Fund at risk if funds are not appropriated in the future for repayment. The legislation allowing the Department to establish the administrative fee on selected taxes did not identify the specific taxes or the precise percentage for repayment. It is the responsibility of the Legislature, not the Executive, to allocate state tax revenues. The Executive requested the Legislature to appropriate funds to pay off the existing loan. Provided the Executive's request is approved, the authorities granted to the Department of Revenue to establish an administrative fee against selected taxes is no longer necessary. This bill eliminates the Department's authority to apply an administrative assessment fee on select taxes in order to meet the debt service payments on the loan outstanding for the replacement of the POINTS system.

Proponents' Testimony:

Steve Austin, Department of Revenue, stood in support of the bill and offered to answer questions.

Opponents' Testimony: None.

Informational Testimony:

Aiden Myhre, Fast Enterprises, informed the committee they are the contractor to replace the POINTS system and offered to answer questions.

Questions from Committee Members and Responses:

SEN. WEINBERG asked what the bill does. **Mr. Austin** clarified the Department is required to pay the debt outstanding on the loan, that is done in February and August. They move income tax or corporation license tax from the general fund to a state special revenue fund. The Board of Investments takes the money from that fund to pay off the outstanding loan. With the idea that this loan would be paid off in full, the Department would have no need for the fee. The bill eliminates the need to assess the fee on selected taxes. **SEN. WEINBERG** asked what loan is being paid off. **Mr. Austin** explained the money was loaned from the Coal Trust Fund to replace the POINTS computer system that they are currently in the process of replacing.

Closing by Sponsor:

CHAIRMAN COONEY closed on the bill.

CHAIRMAN COONEY suggested some executive action be taken. He noted some members might be expecting additional information on **SEN. BLACK'S** bill before they take action on it. He asked for a motion on SB 59 and advised that **SEN. TROPILA** asked that they table the bill.

EXECUTIVE ACTION ON SB 59

{Tape: 2; Side: A; Approx. Time Counter: 13 - 13.4}

Motion/Vote: SEN. SCHMIDT moved that SB 59 BE TABLED. Motion carried 18-1 by voice vote with SEN. KEENAN voting no.

Regarding SB 498, **SEN. BALES** said, in line with the questions he asked **Mr. Tubbs**, if the committee might look at raising the $200,000 limit. He asked for time to see if that is possible. There might be reasons to raise that to $300,000. **CHAIRMAN COONEY** agreed to hold the bill.

EXECUTIVE ACTION ON SB 442

{Tape: 2; Side: A; Approx. Time Counter: 14.9}

Motion: SEN. TESTER moved that SB 442 DO PASS.

SEN. SCHMIDT asked that **SEN. CORY STAPLETON** discuss the POINTS issue for the benefit of the new legislators. **CHAIRMAN COONEY** asked him to provide a thumbnail sketch of the POINTS issue. **SEN. STAPLETON** described a fatal computer system and declared it was more than just a software issue. There was corrupted data and some management issues. There was a huge price tag and it indirectly caused the Department of Revenue to have five directors in the last five years. He stated support for the bill. The fee was modeled on another bill that the Attorney General put forward in the Department of Justice, where INTERCAP loans were used, to siphon off a revenue stream from motor vehicle fees to pay for an IT project. The intent was to get approval with a majority vote but it was recently determined that a 2/3 vote was needed. A bill by **SEN. COONEY** this session corrected that and gave it further definition. The Executive determined it would be best to pay off the loan this biennium when there is a budget surplus. It may have been a spending cap issue.

CHAIRMAN COONEY recalled that **SEN. STAPLETON** was instrumental in dealing with POINTS, calling attention to the problem and taking the lead on getting to the present solution. POINTS was a very costly problem. **SEN. STAPLETON** added he was the sponsor of SB 271 last session. He indicated there were some lessons learned. Up until the hearing on SB 271 in 2003, it was opposed by the Executive. **SEN. STAPLETON** remarked if the Legislature chooses to do things against the Executive, it can in a bipartisan way. He thought it would be interesting to know what money was saved by killing POINTS two years ago. At the time, $100,000 a week was being spent on POINTS which was a stillborn computer system. He suspected the savings were about $10 million.

SEN. TESTER advised that the information was so corrupt they will never know how much money they would have lost with uncollected taxes, which was significant.

SEN. JOHN BRUEGGEMAN described carrying SB 271 in the House. He didn't think they could have gotten a 2/3 vote. It cost at least $4 or $5 million less to go to a new system. POINTS may have cost $60 million in hard costs and potentially up to $100 million. There were $40 million in soft costs that were hard to account for. The new system was less than $17 million. Thanks to **SEN. STAPLETON** there will be better compliance simply because there is a better system. Every state that has implemented the IRIS system has nearly paid for it with increased accuracy and compliance.

SEN. BOB KEENAN asked when POINTS started and for what years was there corrupted data. **SEN. STAPLETON** indicated the idea was bounced around in 1997 and was passed in 1999. There was corrupted data from day one. He noted Y2K was an issue. Employees knew there were problems but under the pressure that is only put on every thousand years, they signed off. Four years of data was corrupt. He said it was an incredible story. Employees were being forced to manually input files on a case by case basis. Part of the bill took away FTE from the department and put them back in the Department of Labor. Because of the corrupted data, the Department of Labor was risking decertification at the federal level. The people who were responsible for that data could no longer be trusted. The Legislative Auditor made the decision to start over. Income audits and corporation audits had been going up and then dipped down. He didn't know if the state would ever recoup those. **SEN. KEENAN** asked for what calendar year will there be good data. **SEN. STAPLETON** said the data moving forward with the IRIS system is accurate. For some of the data that was brought over, there is no way to go back and reconcile. **SEN. KEENAN** thought if anybody in the State of Montana gets audited for those four years, they just have to go to court and cite the corrupted data. If the fiscal note for the new auditors in the Department of Revenue is for those four years, there is nothing there. **SEN. STAPLETON** indicated in subcommittee he refuted the evidence used to justify the decision package based on this trend of auditing. Once there is a system that can send out notices, people will comply.

{Tape: 2; Side: B}

SEN. STAPLETON said some of these things are necessary to close out a chapter that no one is real proud of. This changed the entire way the state government does information technology (IT). **CHAIRMAN COONEY** advised because POINTS is going away, the administrative fee is no longer necessary.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 27

{Tape: 2; Side: B; Approx. Time Counter: 1.3}

Motion: SEN. LAIBLE moved that SB 27 DO PASS.

SEN. LAIBLE referred to the amendment SB002703.alh.

EXHIBIT(fcs46a03)

SEN. LAIBLE said the Budget Office liked the concept of the bill and the amendment addressed some problems with the working mechanisms of the bill.

David Ewer, Budget Director, thanked **SEN. LAIBLE** for helping his office work on the amendments. The concept of the bill was to bring stability over a period of years. He maintained the heart and soul of the bill remains. The bill requires the Legislature to leave a 3% projected ending fund balance. He noted that would be a challenge, but advised it is good public policy to have a strong fund balance. The bill would establish a budget stabilization account. There is already a process in place where if there is a shortfall, the Executive can start making cuts up to the point where a special session may have to be called. This bill would help avoid special sessions. It provides a time line to consider this procedure and plan ahead for the 2007 session. If revenue growth exceeds expectations during the 2007 biennium, there will be funds to fund both the stabilization and emergency account. The bill allows the Governor the flexibility to use the stabilization account, should revenues decline, without calling a special session and allows the Governor discretion to manage a revenue shortfall. The Governor has the option to cut appropriations or use the budget stabilization funds. He thanked **Judy Paynter, Office of Budget and Program Planning**, for being the expert both in the accounting and the impact. Staff looked for unintended consequences and thought the bill was good public policy. He contended this was a strong effort to provide stability.

SEN. TESTER asked how much is the ending fund balance from the 3%. **Mr. Ewer** replied approximately $80 million. **SEN. COBB** asked, if the effective date is July 1, 2006, does the 3% apply to this biennium. That was confirmed by **Mr. Ewer**.

CHAIRMAN COONEY asked about a new fiscal note if the amendments are adopted. **SEN. LAIBLE** said he had no problem with having a new fiscal note drafted once the amendments are accepted. **Mr. Ewer** indicated they would prepare a fiscal note quickly.

Ms. Paynter said they worked with **SEN. LAIBLE** on the bill trying to make it a bill that begins a process needed in Montana for a long time to give stabilization to the budget. There have been significant revenue shortfalls for the last five years, and now there is a significant surplus. The effective date gives planning time for the next budget and wouldn't just jolt the system like the bill, as introduced, would do. The bill implements a system that allows the Governor flexibility to deal with variations in revenue.

SEN. LAIBLE advised the bill creates emergency funds for fires, etc., and one for stabilization. The amendment changes the percentages for those two funds and changed the effective date. Certain one-time monies had already been spoken for. There was a mechanism in the original bill to be able to refund any overages to the taxpayers once the funds reached a cap. Since the date was pushed out, he felt comfortable eliminating that portion of it. He hoped in the future, when those caps are reached, to implement new legislation to put that mechanism back in. He sent the amendments to the Legislative Audit and Legislative Fiscal Divisions and there were no problems. They are pleased there will be a budget stabilization account for the future because it makes a big difference on statewide bonding.

Motion/Vote: SEN. ESP moved that Amendment SB0027023.ALH BE ADOPTED. Motion carried unanimously by voice vote.

CHAIRMAN COONEY requested a new fiscal note be prepared and then the committee will consider it.

SEN. LAIBLE withdrew his motion on SB 27.

SEN. STAPLETON asked what amount would go into the fund in future years. He wondered about the education lawsuit and a possible court order if this money is available. **SEN. LAIBLE** said this bill as amended gives discretion to the Governor for budget stabilization. His vision was if there was a shortfall, as in last session, they would be able to access these funds. He thought there would be lots of people looking to find money in the future. He maintained this is not a partisan bill but is aimed at giving the Governor some tools. As the bill is currently written with a beginning date of July 1, 2006, he didn't think there would be any money in this fund until 2008.

SEN. ESP asked if a better motion would be to delay action.

Motion: SEN. LAIBLE moved TO DELAY ACTION ON SB 27 as amended until the fiscal note is presented.

SEN. COBB thought the fiscal note would say zero.

EXECUTIVE ACTION ON SB 28

{Tape: 2; Side: B; Approx. Time Counter: 18.3}

Motion: SEN. LAIBLE moved that SB 28 DO PASS.

SEN. LAIBLE advised this was an interim committee bill from the Legislative Finance Committee. Currently, agencies can be required to present an alternative to their budget if budget cuts are needed. The Executive Branch can request that agencies submit a budget that is 5% less. This bill requires this be presented as a new proposal. If the budget is out of balance these tools are in place. There is no fiscal impact, but means additional paperwork for the agencies.

SEN. CAROL WILLIAMS recalled the Governor's budget office opposed the bill during the hearing because the information is currently available and the bill is not needed. **SEN. LAIBLE** responded he understood their position, but could not see the concern. If the information is already available, he thought it should be brought forward rather than having to ask for it.

SEN. BOB HAWKS argued the bill is fairly limited. Sometimes legislators might want to look at a 2% or 3% cut. He thought they were creating extra work that is not based on actual needs as they are going through the budgeting process. It might give a different perspective, but he wondered what that is worth.

SEN. LAIBLE said this is not considered a recommendation. It is not required to accept the 5%. It causes no additional work from the departments and is just a tool.

SEN. BALES said the Governor's office has this information and looks at it when they are drawing up the budget. He thought the Legislature is supposed to do the final appropriations and make the decisions on how the budget should look. He thought they should be allowed to see the same amount of information the Governor does without making a special request for that information. He disagreed with **SEN. HAWKS** and thought they could take any portion of the 5%. He thought it was a tool they could use and should have it at their disposal.

SEN. LAIBLE said existing law gives the Executive Branch, if directed by the Budget Director, discretion to submit a budget at 95%. He thought the Legislature should have this tool if they are going to make the determination.

Motion/Vote: SEN. LAIBLE moved that SB 28 DO PASS. Motion failed 8-11 by roll call vote with SEN. BALES, SEN. BARKUS, SEN. BRUEGGEMAN, SEN. COBB, SEN. ESP, SEN. KEENAN, SEN. LAIBLE, and SEN. STAPLETON voting aye.

Motion/Vote: SEN. COBB moved that SB 28 BE TABLED. Motion carried 11-8 with SEN. BALES, SEN. BARKUS, SEN. BRUEGGEMAN, SEN. COBB, SEN. ESP, SEN. KEENAN, SEN. LAIBLE, and SEN. STAPLETON voting no.

CHAIRMAN COONEY advised it was called to his attention, regarding SB 27, to say so ordered, no objection to the motion to delay action.

{Tape: 2; Side: B; Approx. Time Counter: 27.8}

EXECUTIVE ACTION ON SB 247

{Tape: 3; Side: A}

Motion: SEN. BRUEGGEMAN moved that SB 247 DO PASS.

SEN. BRUEGGEMAN conveyed that **SEN. COBB** put the reversion language in statute originally. At the end of a biennium if an agency has money left over they are allowed to make requests to the budget director to keep 30% and carry forward that appropriation into the next biennium. SB 247 raises the percentage to 50%. He said he served two sessions in House Appropriations and contended the budget system punishes good managers. The ultimate discretion lies with the budget director and if the agency is allowed to keep that authority, the general fund gets half. There is a bill at the request of the Computer Planning Council to retain some of its carryforward dollars to be put into a long-term planning account for IT expenditures instead of having massive appropriations requests for big computer systems. The voting boards in the House need to be replaced eventually. He thought they should encourage managers to manage on the long term. The Fiscal Note is for $350,000 a year.

Questions From the Committee:

SEN. ESP thought if the budget director had to decide by the end of June, agencies would have more leverage to keep the money and there would be more incentive.

SEN. WEINBERG didn't favor the money being spent unnecessarily, but when they appropriate money for programs in health and human services, they want that money to be used and those people to be served; they don't want savings. They want to serve as many people as they can with the available money. His fear was with a system like this it would give the incentive to agencies to sock the money away for known or unknown reasons. The people would end up not being served as intended.

SEN. COBB indicated he would support the bill. Under existing law, on page 1, line 17-29, the University System gets to keep all their money. Years ago, the Legislature could never figure out why the University System would get all that money, never reverted a dime, and spent every dime they had. If they had any money left over at the end, they would go out and do short-term projects just to get rid of the money. In that section, the Board of Regents was given control over how to spend it. They quit doing short-term to get rid of the money projects and saved money for longer-term, ongoing projects. The University System still has problems over whether every faculty member spends every dime, but it seems to work generally. It was tried with the schools, but didn't work; it seemed to work for the Universities.

SEN. BRUEGGEMAN informed the committee there used to be something called A accruals where an agency had booked the liability for a project but had not actually spent the money. The Legislature changed that practice because at the end of a biennium, agencies went on spending sprees to expend their appropriations. If Health and Human Services comes to the end of a biennium, haven't expended their appropriation and have other needs, this allows them, with the budget director's approval, to carry forward some of that authority. This may be a tool to help them expend that authority should they not have done that in the biennium. In the last biennium when there was a fiscal shortfall, the budget director instructed agencies not to spend all their authority. In that case, there would not be a retention. He submitted in the next session he would be looking at legislation to help them put some of that money away and use a percentage for things like an IT planning project. Instead of one time hits, managers would be planning for large IT expenditures, system upgrades, etc. That would be a long-term goal.

SEN. BALES addressed the issue of **SEN. WEINBERG'S** fear about reducing services to people. **SEN. BALES** indicated this would involve money agencies use to pay personnel, general operating expenses, and equipment rather than distributions to individuals or things. **SEN. BRUEGGEMAN** confirmed that was correct.

SEN. HAWKS sensed a potential to lose the basic legislative intent in some agencies. All agencies are not the same, and even talking about operating expenses and equipment, vacancy savings, etc., he wondered what unintended consequences might result from the bill. **SEN. BRUEGGEMAN** said he did not see a lot of unintended consequences. The 30% reversion amount is already authorized in statute and the bill would increase that to 50%. The idea was to send a message of fairness. If an agency has money left over at the end of a biennium, the state will get half and the agency will get half.

SEN. CAROL WILLIAMS asked if the University System testified in favor of the bill. **SEN. BRUEGGEMAN** advised the Department of Justice was a proponent and the Budget Office sent an informational witness. **SEN. WILLIAMS** referred to the story in the newspaper about a 7% increase in tuition. She wondered what would stop the University System from increasing tuition on students so there would be a surplus at the end of the year. **SEN. BRUEGGEMAN** said this didn't affect the University System because they are allowed to keep their ending fund anyway; this would apply to state agencies over which the Legislature has direct jurisdiction.

SEN. ESP advised in the last biennium the tobacco prevention program was appropriated what was estimated to be about $3 million of state special revenue in the first year of that biennium. They only spent about $2.5 million within the parameters of the evidence-based program they were developing. They were proposing one-time grants to community contractors to spend that other half a million dollars for projects that may or may not have been for projects within the evidence-based priorities. If this would have applied to them, they could have reverted half of it and carried the other half to the second year where they might have been geared up enough to spend it a little more wisely. He didn't know if contract services were operating expenses or not. As it turned out, the revenue that was projected wasn't there so they didn't do the grants.

SEN. LIND asked how the budget director would look at significant carryforward savings when preparing the budget for the next biennium. He wondered if that was likely to be factored in. **SEN. BRUEGGEMAN** indicated if there was $5 million in unexpended appropriations, there could be a $5 million reversion to the general fund or if they applied for the 50% retention and it was granted, there would be a $2.5 million reversion. It would be up to the budget director with respect to how they want to plan for the next biennium.

SEN. KIM HANSEN asked **Taryn Purdy, Legislative Services,** if there was any problem with federal funding and carrying those monies forward in the next biennium. **Ms. Purdy** said the federal government makes funds available for specific purposes. As long as they stay within the confines of the grant given to the state by the federal government, she didn't see how they would have a problem. The state has to be concerned about whether they are trying to spend grant funds beyond the time period of the grant and that has to be kept in mind.

SEN. RYAN asked what the impact would be on spending caps for state special revenue and general fund. If money is appropriated and is not spent, he wondered how that would work with the spending cap and what would it do to spending in the next biennium. **SEN. BRUEGGEMAN** said his understanding of the spending cap was it is actually what is expended. If they don't spend the money, that money doesn't apply to the cap. **Ms. Purdy** clarified the law says expenditures, but it actually doesn't define appropriation. The appropriation made in the 2005 biennium would count to determine what the next biennium expenditures could be. Because this is carryforward of appropriation authority, it has to be counted for the 2007 biennium. Any anticipated expenditures would be counted against the cap.

SEN. WEINBERG asked if this would give the agencies more discretion or less. **SEN. BRUEGGEMAN** argued it would give more discretion. **SEN. WEINBERG** thought so too. If the problem now is the agencies are dumping money at the end of the year because they haven't spent it all, he would feel he couldn't trust them and that they weren't using their money very well. He wondered about giving them more discretion or reigning them in. He gave the example of human services. When the budget was put together, they restricted a lot of funds because they didn't want to give the department discretion to move money around and not use it. They wanted to make sure they used money for the purposes discussed.

SEN. LAIBLE said he would support the bill. It is already in statute as 30% and would be at the discretion of the budget director. In response to **SEN. RYAN'S** concern about the cap, he indicated the budget director controls that and it is in existing law. He thought this gives an incentive to agencies to streamline their operation, put money aside, no different than in business when depreciation is used to put money aside to capitalize assets to be able to replace them. He thought this was just a tool that will work to the advantage of the state in the long run.

SEN. COBB said this is a proposal for good managers. Bad managers are always going to rip the system off. He recalled one manager years ago in human services who rolled over $8 million every biennium. He would buy a computer contract in May or June, and then on July 1 would reverse it. He got caught and had to put the money back in the general fund. A good manager would not have too much money left at the end.

CHAIRMAN COONEY asked about the history of the current 30% carryover. **SEN. BRUEGGEMAN** said there was information on the back of the fiscal note. There is always some carryforward granted. It is not huge dollars, and this could increase that.

SEN. TESTER asked **SEN. COBB** if he put in the 30%. **SEN. COBB** recalled he changed the part with the Universities.

<u>Vote</u>: Motion passed 13-6 by roll call vote with SEN. KEENAN, SEN. LARSON, SEN. LIND, SEN. RYAN, SEN. WEINBERG, and SEN. WILLIAMS voting no.

ADJOURNMENT

Adjournment: 10:33 A.M.

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SEN. MIKE COONEY, Chairman

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PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT(fcs46aad0.PDF)